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Defendants' Liaison Counsel

Plaintiffs' Liaison Counsel

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

IN RE: TOYOTA MOTOR CORP.
UNINTENDED ACCELERATION
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION

Case No.: 8:10-ML02151 JVS (FMOx)

**JOINT REPORT NO. 2 OF
PLAINTIFFS' AND DEFENDANTS'
LIAISON COUNSEL TO STATE AND
OTHER TYPES OF CASES**

THIS DOCUMENT RELATES TO ALL
CASES

Date: July 20, 2010
Time: 9:00 a.m.
Place: Courtroom 10C

1 Plaintiffs' and Defendants' Liaison Counsel to State and Other Types of
2 Federal Cases (hereafter "Liaison Committees") submit this Joint Report No. 2.
3 The Liaison Committees have worked in consultation with and cooperatively
4 with the Co-Lead Counsel for the Economic Loss cases and the Personal
5 Injury/Wrongful Death cases in preparing this report and will continue to do so
6 during the pendency of this MDL.

7 **I. COLLECTION OF DATA ON STATE AND OTHER TYPES OF**
8 **FEDERAL CASES THAT INVOLVE UA CLAIMS**

9 The Liaison Committees continue to accumulate a master list of state
10 court cases and other federal cases that involve claims of unintended
11 acceleration ("UA"). These cases are being catalogued on an Excel database
12 chart and are being provided to the Court. The database contains the case
13 name, case number, state and court in which it is pending, the presiding jurist,
14 the presiding jurist's contact information, the type of case,¹ the plaintiffs'
15 names, the defendants' names, and the status of each case.² In order to obtain
16 complete and accurate information regarding the identities and contact
17 information of the jurists handling state UA cases, Plaintiffs' Liaison Counsel
18 has been contacting the clerks' offices of the various state courts to gather this
19 information where it has not been available from an online source. An updated
20 electronic copy of the database will be provided to the Court at the upcoming
21 Status Conference or no later than July 23, 2010.

22
23 ¹ The cases will be identified by the following descriptions: Economic
24 Loss Class Action; Personal Injury/Wrongful Death; Lemon Law Individual
25 Claim; Lemon Law Class Action; Securities Class Action; Shareholder
26 Derivative; and Small Claims.

27 ² The small claims court cases are currently included in the database. , In
28 certain jurisdictions discovery is not permitted in small claims cases and there
will likely be limited benefit to coordinating issues as regards the proceedings in
this Court. However, this may not be true in all jurisdictions and for those
reasons we will continue to provide information on the cases that are identified.

1 In addition, Plaintiffs' Liaison Counsel has sent the electronic newsletter
2 discussed in Liaison Counsel's Joint Report No. 1 to all UA plaintiffs counsel
3 outside the MDL, and requested that each fully complete the litigation
4 questionnaire attached. Prior to the next status conference Plaintiffs' Liaison
5 Counsel will incorporate into the database that is maintained by the Liaison
6 Committees the information received from plaintiffs' counsel who have
7 returned the litigation questionnaires.

8 In addition, the Liaison Committees intend to network with the Core
9 Discovery Committee and Lead Counsel of the MDL, as well as leading
10 Plaintiffs' attorneys nationally, to maintain timely and accurate data for the
11 Court through any appropriate method.

12 **II. STATUS OF STATE COURT COORDINATION PROCEEDINGS**

13 As previously reported the Liaison Committees are currently aware of
14 efforts to coordinate UA related matters in three states: California, New York
15 and Texas. Both California and Texas granted petitions for coordination, and
16 the coordination proceeding in New York is currently pending. New
17 developments in each of these state court proceedings are discussed below.

18 **A. California**

19 The Presiding Judge of the Los Angeles Superior Court, the Honorable
20 Charles W. McCoy, Jr., will appoint a coordination trial judge.

21 Plaintiffs' Liaison Counsel will continue to track all coordinated
22 proceedings and other major activity at the state level, and appear at all major
23 hearings where feasible, particularly at the initial stages to implement the
24 MDL's goals.

25 **B. Texas**

26 On June 25, 2010, the Texas Judicial Panel on Multi-District Litigation
27 consolidated the fifteen (15) actions filed in Texas state court before Judge
28 Robert Schaffer of the 152nd District Court of Harris County. Plaintiffs'

1 Liaison Counsel has discussed with Jeffrey Wigington of Corpus Christi, who
2 was appointed as Notice Counsel for all plaintiffs in the Texas cases, issues
3 regarding coordination with the MDL proceedings. Mr. Wigington has pledged
4 to support and encourage coordination. Mr. Wigington will alert the Liaison
5 Committees as to all orders and hearings when scheduled by Judge Schaffer.
6 To date, none has been set. Plaintiffs' Liaison Counsel have indicated that they
7 intend to appear at the major hearings were feasible, particularly at the initial
8 stages to implement the MDL's goals.

9 **C. New York**

10 On June 12, 2010, the Honorable Justice Helen E. Freeman set a briefing
11 schedule on the consolidation motion concerning 16 cases and also denied a
12 motion to stay pending potential consolidation. The last deadline in the
13 scheduling order passed July 9, 2010. All submissions have been received and
14 are under review, and the Litigation Coordinating Panel hopes to rule on the
15 question of consolidation within 30-60 days.

16 **III. STATUS OF OTHER FEDERAL NON-MDL ACTIONS**

17 On June 6, 2010, U.S. District Judge Dale S. Fischer granted a motion to
18 consolidate the federal securities actions concerning allegations of unintended
19 acceleration (the "Securities Actions") in the Central District of California
20 under the docket number CV 10-922 DSF (AJWx). The Securities Actions,
21 along with plaintiffs' motions for appointment of lead counsel, were stayed
22 until the U.S. Supreme Court decided *Morrison v. National Bank of Australia*, a
23 case expected to clarify the standing of foreign investor claimants. An opinion
24 in *Morrison* was issued on June 24, 2010.

25 The Liaison Committees will continue to monitor any federal non-MDL
26 actions and report any relevant information to the Court, and endeavor to
27 coordinate any areas of overlapping discovery, if any, as those litigations
28 proceed.

1 Plaintiffs' Lead Counsel and Plaintiffs' Liaison Committee have also made
2 contact with Joel Rochon, who Plaintiffs' Liaison Counsel believes is acting as
3 lead counsel, at least informally, with respect to the unintended acceleration class
4 action litigation filed in Ontario, Canada, and related Canadian litigation. To
5 inform Mr. Rochon of the status of this MDL, Plaintiffs' Lead Counsel sent the
6 Case Management Orders issued by this Court to date. Plaintiffs' Liaison Counsel
7 have requested that Mr. Rochon periodically keep Plaintiffs' Liaison Counsel
8 informed of the Canadian proceedings, and Plaintiffs' Liaison Counsel will
9 reciprocate that courtesy.

10 **IV. NOTIFICATION OF MDL ACTIVITIES AND ORDERS TO**
11 **STATE COURT JURISTS AND NON-MDL FEDERAL JURISTS**

12 The Court has indicated that it will send formal notification to each jurist
13 presiding over UA related Toyota cases outside of the MDL to advise of the
14 existence of the MDL, the Liaison Committees and all necessary contact
15 information.

16 The Liaison Committees suggest that a formal notification be sent by the
17 Court to each jurist presiding over, and counsel to the parties in, UA related
18 Toyota cases outside of the MDL. Communication with the jurists and counsel
19 at this juncture would maximize efficiency and coordination between the MDL
20 and other jurisdictions in light of the recent Joint Proposed Protective Order,
21 Joint Proposed Preservation Order, and the Phase 1 Coordinated Discovery
22 Order. The Liaison committees envision that such a communication would
23 contain copies of these Orders, along with the contact information of the
24 Committees. The Liaison Committees will be submitting to the Court a
25 spreadsheet with the jurists' contact information in a format conducive to large
26 mailing and stand willing to assist the Court in any way it deems useful or
27 necessary to undertake such a project.

28 Additionally, the non-MDL attorneys, jurists and other interested parties

1 can obtain, through this Court's website and/or through communications from
2 the Liaison Committees, information on the MDL proceedings and copies of
3 the Court's orders and hearing transcripts that may be relevant to UA related
4 cases that are not in the MDL.

5 The Liaison Committees will endeavor, to the extent possible, to
6 coordinate as to the substance of any written communication with the non-
7 MDL courts regarding coordination efforts with the MDL

8 **V. NEWSLETTER TO STATE COUNSEL**

9 Plaintiffs' Liaison Counsel also tracks individual plaintiff attorney
10 contact information and has used that information to send out the Newsletter
11 and Questionnaire annexed to Joint Report 1. See Section I. Plaintiffs' Liaison
12 Counsel will electronically inform plaintiffs' counsel in any UA actions
13 whenever the Court issues important orders in the MDL that may be relevant to
14 related actions. Defendants' Liaison Counsel will forward such information to
15 the various firms that are representing Toyota and its affiliated entities in any
16 UA action.

16 **VI. COORDINATED DISCOVERY ORDER**

17 In order to foster cooperation and coordination, and subject to the Court's
18 approval, undersigned counsel seek to participate in the formulation of a
19 Coordinated Discovery Order which would provide rules for cross-noticing
20 depositions in various venues, which attorneys would take the lead in the
21 deposition, length of time for deposition, etc. In addition, Lead Counsel have
22 negotiated and submitted to the Court a Protective Order which contains a
23 process for sharing protected documents with counsel in UA related matters
24 pending in state courts. A protocol of contact between the Liaison Committees
25 and Special Master(s) appointed by this Court, and a system providing timely
26 notification of the actions the Special Master(s) subsequently take, should be
27 considered. A clear protocol should be established in conjunction with the
28

1 Core Discovery Committee regarding the coordination of discovery and liaison
2 with any UA action to promote the overall goal of judicial efficiency and
3 economy.

4 **VII. CONCLUSION**

5 All of the above steps will promote the important goals of mutual trust
6 and cooperation, as well as illustrate efficiency, so that the concerns of non-
7 MDL litigants, counsel and judges regarding the effect of this MDL on pending
8 litigation can be minimized.

9 Dated: July 16, 2010

Respectfully submitted,
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